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To: Microsoft ATR
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Subject: Microsoft Settlement

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Under the Tunney Act, I would like to comment on the proposed Microsoft Settlement.

In the Antitrust trial, a number of findings were made. Further, upon appeal a number of facts were affirmed including that Microsoft has a monopoly on Intel-compatible PC operating systems, and that the company's market position is protected by a substantial barrier to entry. "Furthermore, the Court of Appeals affirmed that Microsoft is liable under Sherman Act § 2 for illegally maintaining its monopoly by imposing licensing restrictions on OEMs, IAPs (Internet Access Providers), ISVs (Independent Software Vendors), and Apple Computer, by requiring ISVs to switch to Microsoft's JVM (Java Virtual Machine), by deceiving Java developers, and by forcing Intel to drop support for cross-platform Java tools." (from Dan Kegel: <http://www.kegel.com/remedy/remedy2.html>)

Since Microsoft illegally maintained its monopoly, Microsoft enjoys a strengthened Barrier of Entry and little or no competition in the Intel-compatible operating system market. As such, the Final Judgement must remedy the situation by significantly reducing the Application Barrier of Entry and by greatly increasing competition in the market. The proposed settlement does not remedy either situation, and it actually strengthens their current monopoly and allows for new monopolies to be created.

There are a number of areas that are flawed in the Proposed Settlement. A list of them is located here: <http://www.kegel.com/remedy/remedy2.html>

Some other problems:

- * There is no provision for preventing an extension of Microsoft's monopoly into other areas. Any Microsoft products must be provided as additional-cost options with a new computer which allows for a user to not be forced into buying them if they do not wish to.

- * There is no provision for opening Microsoft's current and future file formats so that any competitors' applications can properly read/write/modify documents created using Microsoft applications.

- * There is no provision for requiring Microsoft to publish, in entirety, the specifications for any networking protocols used in Microsoft's products.

One other critical flaw is the lack of any enforcement in the settlement and the lack of any serious punishment if Microsoft violates the terms of the settlement. In the Proposed Settlement, only investigative issues are covered. There are no mechanisms for punishing Microsoft if they violate any terms. This is akin to a convicted criminal (which Microsoft is) being told at a sentencing hearing that his only punishment is to agree to not commit the crime again, and if the criminal does commit the same crime, he will just be "watched" some more. Without any mechanism for punishment, Microsoft can easily violate the settlement terms with no fear of costs or consequences. The current Antitrust proceedings resulted from Microsoft's violation of a Consent Decree from 1995, and indicate a willingness by Microsoft to break the law to maintain their market share.

For years, it has been stated that computing is critical to the United States' economic future, and as such, to the entire world. If we allow Microsoft to continue to impede competition and destroy innovation by accepting the Proposed Settlement, the country's future and perhaps the whole world's future are in danger of suffering significant damage from which it may take years to recover. Competition is vital to any important market and provides benefits to customers and to the economy. A great example of competition's benefits is in the area of Intel-compatible processors or CPUs. Intel and AMD are the two main competitors in this area, and their competition has had a large positive effect. Their products are better, cheaper, and easily available.

Finally, Microsoft has eliminated customers' choices by restricting changes to applications bundled with their operating system and by forcing computer manufacturers to install their operating system through the use of restrictive contracts. One of the cornerstones of our country is freedom of choice. Microsoft has violated that right and must be prevented from violating freedom of choice any further.

In summary, Microsoft has been found guilty of violating the law. These violations and their damage to the market must be remedied, and future damage must be prevented. The Proposed Settlement does neither and **MUST** be rejected since it does not serve the public interest.

Thanks for your time,

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